

Application No. 09/731,506
Applicants: Albert Erdrich et al.
Amendment in Response to Office Action dated September 30, 2003

REMARKS

Applicants respectfully request reconsideration and allowance of this application in view of the amendments above and the following comments.

Claim 1-4, 17, 30-41, and 45-49 are pending. Claims 5-16, 18-28 and 42-44 have been canceled. Former claims 42-44 have been recast as new claims 45-48. New claim 49 is supported by originally filed claim 29. Amendments have been made to claims 1-4, 17 and 30-41 to place the claims in better patent practice format. Amendments have been made to the specification to cancel references to the claims. Changes that have been made to the claims and the specification using strikethrough and underlining are presented above. It is believed that no new matter has been added.

For the record, Applicants emphasize that although the claims were amended and, therefore, might be considered to have been amended for a reason substantially related to patentability, a fair reading of the amended claims will reveal that the departures from the previous claims were for clarification purposes only, and that Applicants did not narrow the claims in any material respect. Therefore, Applicants submit that the amended claims are entitled to the full range of equivalents.

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Rejections under 35 U.S.C. 101

The Examiner rejected claims 1-6, 8-14, 17 and 27-28 under 35 U.S.C. 101 as claiming the same invention as that of claims 1-27 in U.S. Patent No. 6,575,750. In response, Applicants have canceled claims 5-16 and 18-28. Regarding the remaining claims 1-4 and 17, Applicants submit that they are not duplicates of any patent claim. If the Examiner disagrees, then Applicants respectfully requests that for each of claims 1-4 and 17 that the Examiner identify the patent claim which is identical to it. Further on this point, Applicants remind the Examiner that a reliable test for double patenting under 35 U.S.C. 101 is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent. See *In re Vogel*, 164 USPQ 619 (CCPA 1970); See also MPEP §804 [under II(A) entitled "Statutory Double Patenting- 35 U.S.C. 101"]. Therefore Applicants submit no application claim here is co-extensive in scope with any patent claim, and accordingly, there is no same invention double patenting.

In view of the foregoing, Applicants submit that the Examiner would be fully justified to reconsider and to withdraw this rejection. An early notice that this rejection has been reconsidered and withdrawn is, therefore, earnestly solicited.

Rejection under obviousness-type double patenting

The Examiner rejected claims 7, 15, 16, 18-26 and 29-44 under the judicially created doctrine of obviousness-type double patenting over claims 1-27 of U.S. Patent No. 6,575,750. In response, a terminal disclaimer is submitted in a separate paper.

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In view of the foregoing, Applicants submit that the Examiner would be fully justified to reconsider and to withdraw this rejection. An early notice that this rejection has been reconsidered and withdrawn is, therefore, earnestly solicited.

Conclusion

Applicants believe that the foregoing constitutes a bona fide response to all outstanding objections and rejections.


Applicants also believe that this application is in condition for immediate allowance. However, should any issue(s) of a minor nature remain, the Examiner is respectfully requested to telephone the undersigned at telephone number (212) 808-0700 so that the issue(s) might be promptly resolved.

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Early and favorable action is earnestly solicited.

Respectfully submitted,

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that the foregoing Amendment under 37 CFR § 1.111 (13 pages total) are being facsimile transmitted to the United States Patent and Trademark Office on the date indicated below:

Date: January 26, 2004

By 
David D. Kim